IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

Bail Appl..No. 4843 of 2007()

CRIME NO.77/2006 OF VIYOOR POLICE STATION

: PETITIONER/2ND ACCUSED

SHAJI JOHN, AGED 49 YEARS,
S/O JOHN PAUL, PUTHENPURAKKAL HOUSE,
ADAT P.O., THRISSUR TALUK.

BY ADV. SRI.BABU CHERUKARA

RESPONDENTS: COMPLAINANT

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1. SUB INSPECTOR OF POLICE,
VIYOOR, THRISSUR DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4843 of 2007

Dated this the 16th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 420 I.P.C. He is the 2nd accused in the crime. Altogether there are 5 accused persons. The crux of the allegations is that an amount of Rs.1,35,000/- was fraudulently received by the accused persons, who acted in collusion, from the defacto complainant. He was promised a visa. The visa was not made available. The amount was not returned. It was evident to the defacto complainant that the entire ploy was only to induce him to part with money without any serious intention of performing the promise. The crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations raised are totally unjustified. The petitioner is the brother of a friend of the defacto complainant. Coming to know of the plight of the defacto complainant, he had tried to intervene and settle the disputes between the parties. Now false allegations are being raised against him unnecessarily. The petitioner is willing to comply with any conditions. He may be saved of the undeserved trauma of arrest and detention. Anticipatory bail may be granted to him, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the indications suggest eloquently that the petitioner was also a player in the fraudulent scheme to induce the defacto complainant to part with money. Part of the amount was actually received from the petitioner also as per the materials collected so far, submits the learned Public Prosecutor . At any rate, this is not a fit case where directions under Section 438 Cr.P.C can or ought to be issued. The petitioner may be directed to resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor . I do not find any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied, is a fit case where the petitioner must appear before the learned Magistrate having jurisdiction or the Investigating Officer and then seek regular bail in the ordinary course.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after

giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-